HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:25670 OF 2007

Dated:04.12.2007

Between:

M/s. Co-options Technologies Limited,
44, Mithilanagar Colony, Road No.12,
Banjara Hills, Hyderabad., rep., by its
Y. Subrahmanyam, Managing Director.

..Petitioner

And

1. The Commercial Tax Officer,
   Abids Circle, IV Floor, Old
   Kakatiya Building, Nampally, Hyderabad
   And others.

..Respondents.

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HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

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ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking to declare the action of the 2nd respondent in rejecting the stay application vide order dated 30.10.2007 and consequentially to declare the garnishee proceedings issued by the 1st respondent, dated 26.11.2007, as illegal and arbitrary and to restrain the 1st respondent from taking any coercive steps for recovery of the disputed tax pending disposal of the appeal before the 2nd respondent.

The main grievance of the petitioner is that aggrieved by the assessment order passed by the 1st respondent, the petitioner filed a writ petition besides filing a regular appeal and stay application before the 2nd respondent. But the 2nd respondent rejected the stay application on 30.10.2007. Taking advantage of the same, the 1st respondent issued impugned notice, dated 26.11.2007 demanding the balance disputed tax. Aggrieved by the same, the present writ petition has been preferred.

Heard the learned Counsel appearing for the petitioner and the learned Government Pleader for Commercial Tax and perused the material available on record.

It is the contention of the learned Counsel for the petitioner that

an appeal is pending before the 2nd respondent and the writ petition is also pending as to the assessment of disputed tax and in such a situation, rejection of stay application is unjustified and that if the relief as to the stay of the proceedings is not entertained and if the recovery of the disputed tax in question is effected during the pendency of the appeal before the 2nd respondent and the writ petition, the very purpose of filing the said appeal, which is a statutory remedy that is available to the aggrieved party, would be defeated.

In the facts and circumstances of the case and in view of the pendency of the appeal before the 2nd respondent, without expressing any opinion on the merits of the case, We feel it a fit case wherein stay can be granted, but subject to imposition of certain conditions. Accordingly, there shall be stay of recovery of disputed tax till the disposal of the appeal pending before the 2nd respondent subject to the condition of the petitioner depositing 50% of the disputed tax within a period of six (6) weeks from today. However, it is made clear that the amount paid if any, shall be given credit to the above stipulated sum.

It is needless to observe that in view of the above stay, the garnishee proceedings shall become inoperative. However, it is made clear that in case of failure to comply with the condition stipulated above, the garnishee proceedings become operative.

Subject to the above direction, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Rohini

Date: 4th December, 2007
Nn/Gurc.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:25670 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

04/12/2007